

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

DARNELL RAY PALMER,

Plaintiff,

v.

CIVIL ACTION NO. 1:19-00112

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of findings and recommendation regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Tinsley submitted to the court his Findings and Recommendation ("PF&R") on November 19, 2019, in which he recommended that the court deny plaintiff's motion for summary judgment, grant defendant's request to affirm his decision, affirm the final decision of the Commissioner, dismiss this action, and remove the matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), plaintiff was allotted fourteen days and three mailing days in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. The failure of any party to file such objections within the time allowed constitutes a waiver of

such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

On December 3, 2019, plaintiff filed objections to the PF&R. (ECF No. 17). Defendant responded to plaintiff's objections on December 4, 2019. (ECF No. 18). With respect to plaintiff's objections, the court has conducted a de novo review.

Plaintiff's first objection goes to the PF&R's conclusion that the Administrative Law Judge's ("ALJ") determination of his last insured date was supported by substantial evidence. According to plaintiff, "the ALJ's conclusion ignored significant testimony from plaintiff". ECF No. 17 at 1.

The ALJ's determination that plaintiff's reported self-employment income after 1999 should be excluded was supported by substantial evidence. As the PF&R noted, that decision "was based on Claimant's own statements that although he reported the income on his taxes, he did not actually do the work to earn that income." PF&R at 17. The PF&R contains a detailed recitation of the evidence in the record that supports this finding and that evidence is also discussed in the ALJ's decision. See Transcript at 11-13. To the extent that plaintiff's quarrels with the ALJ's resolution of conflicts in the evidence, such an objection is without merit. "[I]t is not within the province of a reviewing court to determine the weight of the evidence, nor is it the court's function to substitute its judgment for that of the

Secretary if his decision is supported by substantial evidence. . . . Ultimately, it is the duty of the administrative law judge reviewing a case, and not the responsibility of the courts, to make findings of fact and to resolve conflicts in the evidence." Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990).

Plaintiff's objection is **OVERRULED**.

Plaintiff also objects to the PF&R's conclusion that the ALJ substantially complied with the Appeals Council's Order. For the reasons outlined in the PF&R, see ECF No. 16 at 17-19, the court agrees with Magistrate Judge Tinsley that the ALJ complied with the Appeals Council's order. Plaintiff's objection is **OVERRULED**.

Plaintiff's final objection is that the ALJ failed in his duty to develop the record. As discussed in great detail in the PF&R, the ALJ satisfied his duties in this regard. An ALJ need only collect enough information to fairly evaluate a claimant's application for benefits; he or she is not required to act as a claimant's counsel. See Craft v. Apfel, 164 F.3d 624, 1998 WL 702296, *3 (4th Cir. 1998) ("While the ALJ must make a reasonable inquiry into a claim of disability, he has no duty to `go to inordinate lengths to develop a claimant's case.'") (quoting Thomas v. Califano, 556 F.2d 616, 618 (1st Cir. 1977)); Bell v. Chater, 57 F.3d 1065, 1995 WL 347142, *4 (4th Cir. 1995) (per curiam) ("Although the ALJ has a duty to explore all relevant

facts and inquire into the issues necessary for adequate development of the record, he is not required to function as the claimant's substitute counsel, but only to develop a reasonably complete record.") (internal citations and quotations omitted). A review of the transcript from the second hearing shows that the ALJ went to great lengths to explain to plaintiff the relevant issues and try to generate information to address those issues. For these and other reasons discussed in the PF&R, plaintiff's objection that the ALJ failed to develop the record is **OVERRULED**.

Based upon the foregoing, the court adopts the Findings and Recommendations of Magistrate Judge Tinsley as follows:

1. Plaintiff's motion for summary judgment is **DENIED**;
2. Defendant's request to affirm his decision is **GRANTED**;
3. The final decision of the Commissioner is **AFFIRMED**;
4. The case is **DISMISSED**; and
5. The Clerk is directed to remove the case from the court's docket.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record and unrepresented parties.

IT IS SO ORDERED this 5th of March, 2020.

ENTER:

David A. Faber

David A. Faber

Senior United States District Judge